

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
CASE NO. 3:07-CV-464-JBC
FILED ELECTRONICALLY

DECL. OF Kelly Kuhl
Exh. 1

CAUDILL SEED & WAREHOUSE CO., INC.)
d/b/a CAUDILL SEED CO.,)
PLAINTIFF,)
v.)
BRASSICA PROTECTION PRODUCTS LLC,)
DEFENDANT.)

1<4 Compl.

**COMPLAINT FOR DECLARATORY JUDGMENT
AND DEMAND FOR JURY TRIAL**

Plaintiff, Caudill Seed & Warehouse Co., Inc. d/b/a Caudill Seed Co. ("Caudill") brings this action against Defendant Brassica Protection Products LLC ("BPP") for a declaratory judgment of patent non-infringement, and alleges as follows:

Jurisdiction and Venue

1. This is an action for declaratory judgment arising under the patent laws of the United States, Title 35 of the United States Code, and 28 U.S.C. § 2201(a). Exclusive subject matter jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1338(a). Venue lies in this judicial district pursuant to 28 U.S.C. § 97(b) and 1391(b).

The Parties

2. Caudill is a Kentucky corporation headquartered at 1402 W. Main Street, Louisville, Kentucky 40203.

3. Upon information and belief, BPP is a limited liability company with its principal place of business at 2400 Boston Street, Suite 358, Baltimore, Maryland 21224.

The Patents In Suit

4. Upon information and belief, BPP is the exclusive licensee of United States Patents RE-36,784; 5,725,895; 5,968,567; 5,968,505; 6,177,122; 6,521,818; 6,242,018; and 6,737,441, ("BPP Patents"). Upon information and belief, it holds all substantial rights in the BPP Patents.

5. United States Patent RE-36,784 ("the '784 patent") was re-issued to Cho et al. on July 18, 2000 for "Chemoprotective Isothiocyanates" and was originally issued as United States Patent 5,411,986 on May 2, 1995. A copy of the '784 patent is appended hereto as Exhibit A.

6. United States Patent 5,725,895 ("the '895 patent") was issued to Fahey et al. on March 10, 1998 for "Method of Preparing a Food Product from Cruciferous Seeds." A copy of the '895 patent is appended hereto as Exhibit B.

7. United States Patent 5,968,567 ("the '567 patent") was issued to Fahey et al. on October 19, 1999 for "Method of Preparing a Food Product from Cruciferous Sprouts." A copy of the '567 patent is appended hereto as Exhibit C.

8. United States Patent 5,968,505 ("the '505 patent") was issued to Fahey et al. on October 19, 1999 for "Cancer Chemoprotective Food Products." A copy of the '505 patent is appended hereto as Exhibit D.

9. United States Patent 6,177,122 ("the '122 patent") was issued to Fahey et al. on January 23, 2001 for "Cancer Chemoprotective Food Products." A copy of the '122 patent is appended hereto as Exhibit E.

10. United States Patent 6,521,818 ("the '818 patent") was issued to Fahey on February 18, 2003 for "Development of Novel Highly Chemoprotectant Crucifer Germplasm." A copy of the '818 patent is appended hereto as Exhibit F.

11. United States Patent 6,242,018 ("the '018 patent") was issued to Fahey et al. on June 5, 2001 for "Cancer Chemoprotective Food Products." A copy of the '018 patent is appended hereto as Exhibit G.

12. United States Patent 6,737,441 ("the '441 patent") was issued to Fahey on May 18, 2004 for "Treatment of Helicobacter with Isothiocyanates." A copy of the '441 patent is appended hereto as Exhibit H.

Case or Controversy Suit

13. There is a substantial controversy between Caudill and BPP having adverse legal interests of sufficient immediacy and reality to warrant relief. In a state court action claiming breach of contract, BPP has accused Caudill of infringing the patents in suit through Caudill's making and selling of glucoraphanin-containing products by alleging that Caudill has made unauthorized use of the BPP patents.

14. Thus, Caudill has a reasonable apprehension that it will be sued for patent infringement by BPP based upon Caudill's making, using, selling, and offering for sale of glucoraphanin-containing products.

Allegation of Non-Infringement

15. Caudill's manufacture, use, sale, and offering for sale of glucoraphanin-containing products does not infringe any valid claim of any of the BPP Patents.

Request For Relief

WHEREFORE, Caudill respectfully requests:

- A. the entry of a judgment declaring that Caudill has not infringed and is not infringing any of the BPP Patents;
- B. the entry of a judgment declaring that the BPP Patents are invalid or unenforceable;
- C. an award of its attorney fees (35 U.S.C. § 285);
- D. an award of its costs; and
- E. such other relief as this Court may deem appropriate under the circumstances.

JURY TRIAL DEMANDED

Caudill hereby demands trial by jury for all issues in this action triable of right by jury.

**CAUDILL SEED CO., INC.
A Kentucky Corporation**

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